

(1997) 05 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 13313 of 1989

Director Father Muller's Charitable Institution

APPELLANT

Vs

Regional Transport Officer and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 16 (a), 7
Karnataka Taxation Rules, 1957 — Rule 34

Citation : (1998) ILR (Kar) 847

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : M.R.V. Achar, for the Appellant; K.M. Shivayogiswamy, G.P., for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur

1. Even though this petition is posted only for orders, the same has been heard for final disposal with consent.

2. By a notification dated 13th of July 1965, the Government of Karnataka in exercise of its powers u/s 16(a) of the Karnataka Motor vehicles Taxation Act, 1957, exempted from payment of tax motor vehicles exclusively owned and used by institutions doing charitable work and those owned by individuals for giving free medical aid to the public or for providing relief such as supplying food, clothing and medicine in times of natural calamities. Pursuant to the said-notification, a 1969 model motor vehicle bearing Engine No. TI 6697, Chassis No. 1883 and owned by the petitioner Father Mullers Hospital, Kankanady, Mangalore was exempted from payment of tax under the Act subject to the condition that the exemption would be valid only tilt such time the vehicle was owned by the said institution and used for the purposes specified in the Government notification mentioned earlier. The vehicle thus enjoyed exemption from payment of taxes over the years till the year 1980 when the Government by yet another

notification dated 6.9.1990 withdrew the exemption in question with effect from 1.10.1980. Consequent upon the withdrawal of the exemption, the Regional Transport Officer, Mangalore issued a demand notice dated 18.12.1984 calling upon the petitioner to pay a sum of Rs. 29,540/- as tax due and payable in respect of the vehicle for the period 1.10.1980 to 30.9.1985. In response, the petitioner pointed out that the vehicle was being used for the purpose of carrying physically handicapped patients and had at no stage been used for hire, hence was liable to be exempted from the payment of tax under the Act. The Regional Transport Officer, did not agree and pointed out by his endorsement dated 03.01.1986 that the exemption granted to vehicles like the one owned by the petitioner having been withdrawn by the Government Order dated 1.10.1980, there was no question of extending any such benefit to the petitioner. Having evoked no further response from the petitioner, the Regional Transport Officer issued a show cause notice dated 17.09.1996 calling upon the Director of the Petitioner-Institution to appear and show-cause as to why proceedings for the recovery of the outstanding amount be not initiated. A prosecution notice dated 4.3.1988 was also issued against the petitioner on its failure to pay up the outstanding amount. It was only on receipt of the said notice that the petitioner for the first time pointed out in a representation addressed to the RTO (Annexure-N to the writ petition) that the vehicle in question had been in disuse since January 1985. A request for cancellation of the registration certificate was also made. The RTO, had in the meantime issued yet another notice dated 29.11.1988 calling upon the petitioner to pay a sum of Rs. 31,634/- towards tax payable towards the vehicle for the period 1.10.1980 to 31.12.1988. Aggrieved, the petitioner has come up with the present Writ Petition assailing the validity of the demand notice aforementioned as also the reference made to the Tahsildar for recovery of the amount mentioned therein.

3. Mr. Achar, learned Counsel appearing for the petitioner, argued that the vehicle in question had been exempted from payment of tax under the Act in terms of the order of Commissioner for Transport dated 18.8.1989 Annexure-A, in the light whereof, the question of determining or demanding any tax against the same did not arise. There is however no substance in this submission. The order of exemption relied upon by the petitioner, it is apparent from a plain reading thereof, was passed in the light of the exemption granted by the State Government u/s 16 of the Act to vehicles used exclusively for charitable purposes. The said exemption itself having been withdrawn by the State Government with effect from 1.10.1980, the question of the petitioner's vehicle continuing to enjoy any such exemption did not arise. The Regional Transport Officer was in these circumstances perfectly justified in pointing out to the petitioner that the vehicle had ceased to enjoy any such exemption with effect from the date of the said withdrawal. It is apparent that the order passed by the Commissioner of Transport granting exemption to the petitioner's vehicle was pursuant to and in the light of the exemption granted by the State Government in exercise of its statutory powers u/s 16. The order passed by the Commissioner

of Transport could not stand by itself in the absence of a proper notification issued by the competent authority under the aforementioned provision. I have therefore no hesitation in rejecting the first limb of Mr. Achar's argument.

4. Mr. Achar next argued that the vehicle in question had remained in disuse since January 1985 and was therefore to stand exempted from payment of tax u/s 16. There is no merit even in this submission. Section 16 of the Act empowers the State Government to attempt or reduce tax payable under the Act in respect of any class of motor vehicles or motor vehicles in use on roads. In exercise of the said powers, the Government have by a notification dated 11.9.1980 granted exemption to motor vehicles registered in the State of Karnataka and not intended to be used on roads from payment of tax. Under the said Act subject to the owner of the vehicles complying with the procedure prescribed therein. The procedure prescribed includes an intimation by the owner to the authority concerned before the commencement of the quarter, half year or a year as the case may be in writing in Form No. 30 of Rule 34(a) of the Karnataka Taxation Rules, 1957. The notification further requires that the registration certificate and the tax card in respect of the motor vehicle should be surrendered to the Regional Transport Authority concerned and that the vehicle in question shall not be removed during the period of exemption from the place where it is parked. It is not in dispute that the petitioner had at no stage made any request for exemption from payment of tax in keeping with the procedure prescribed by the notification. No intimation in the prescribed form had been sent to the authority concerned nor were the documents pertaining to the vehicle surrendered. The question of the vehicle enjoying any exemption even in the absence of the requisite conditions being fulfilled therefore did not arise nor was the respondents duty bound to consider any such request dehors the requirement of the notification.

5. Mr. Achar lastly argued that even apart from Section 16 the petitioner was entitled to claim refund of the amount of tax payable or paid if the vehicle was proved to the satisfaction of the prescribed authority to have remained in disuse during the period in question. He referred to Section 7 of the Act and placed reliance upon a decision of the Supreme Court in State of Karnataka Vs. K. Gopalakrishna Shenoy and Another, . He urged that in the light of the specific provision contained in Section 7, the petitioner was entitled to a declaration that the vehicle was not subject to tax on account of its disuse. I cannot agree, Section 7 regulates refund of tax paid by the owner of a motor vehicle and provides that where a tax on any motor vehicle has been paid for any period and it is proved to the satisfaction of the prescribed authority that the vehicle had not been used during the whole of that period, or a continuous part thereof not being less than one calendar month, a refund shall be made of such portion of the tax subject to such conditions as has been prescribed. A plain reading of the provision shows that the question of refund would arise only if the owner has already paid the amount of tax on the vehicle in question, in the present case, the amount of tax demanded by the respondents has not so far been paid. Even

when a major part of the said amount pertains to the period during which the vehicle was admittedly in use. It is pertinent in this regard to notice that the claim made against the petitioner is for the period 1.10.1980 to 31.12.1988. During this period even according to the petitioner's case the vehicle was in use upto January 1985. In other words, the vehicle had been in use without any exemption from the payment of tax for the period 1.10.1980 to 31.12.1984. Tax on the vehicle for this period was therefore clearly payable even as per the case set up by the petitioner. As regards the period beginning January 1985 also the petitioner could claim refund only if it had deposited the amount of tax due. Whether or not the vehicle had been in disuse from January 1985 as claimed by the petitioner could then be raised by the petitioner and examined by the prescribed authority in accordance with law.

6. Mr. Achar however made a specific reference to and placed heavy reliance upon the following passage from the decision in Gopalkrishna Shenoy's case :-

"Even if the vehicle was not in a road worthy condition and could not be put to use on the roads without the necessary repairs being carried out, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund. Perhaps in exceptional cases where the vehicle has met with a major accident or where it is in need of such extensive repairs that it would be impossible to put the vehicle due to its defective condition and cancel the Certificate of Fitness or suspend it, the person concerned may surrender the Certificate of Registration and other documents like permit etc., and seek the permission of the Transport Authorities to waive the payment of tax on the ground that no proof of non-user was necessary and as such payment of tax on the one hand and an automatic application for refund on the other would be a needless ritualistic formality and if the permission sought for is granted, he need not pay the tax. In all other cases the only course left open is for the person concerned, to pay the tax in advance and thereafter apply to the Authorities and obtain refund of tax after proving that the vehicle was not fit for use on the roads and had in fact not been made use of."

7. It was urged that in exceptional cases the owner could claim waiver of payment of tax on the ground that no proof of non-user was necessary, so that payment of tax on the one hand and automatic application for refund on the other would be a needless ritualistic formality. He urged that in the light of the report submitted by the Motor Vehicles Inspector that the vehicle was in disuse and un road worthy, his case fell within the category of exceptional cases referred to by their Lordships. I am not however impressed by this submission. Whether or not the vehicle was roadworthy and if so since when are pure and simple questions of fact, which the prescribed authority would have to examine and determine before granting refund to the petitioner. In the absence of any claim and proof of such disuse to the satisfaction of the authority concerned, it would be premature for this Court to either uphold any such claim of disuse or direct the authority to waive the payment of tax. This is so particularly in view of

the fact that the vehicle in the present case is not involved in any, major accident so that the petitioner's case could fall under the exceptional situations referred to in the Shenoy's case, nor is there anything to show conclusively that its condition was such as could make it un road worthy during the relevant period.

8. In the result, this petition fails and is accordingly dismissed reserving liberty for the petitioner to make an appropriate claim in accordance with the provisions of Section 7 for the refund of the tax after the same is paid on proof of disuse of the vehicle. In the circumstances, however, the parties shall bear their own costs.